

EXHIBIT U

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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BUILDERS ASSOCIATION OF)
METROPOLITAN PITTSBURGH)
and S. RAND WERRIN,)
Plaintiffs,)
vs.) Civil Action No.
CITY OF PITTSBURGH,) 2:22-cv-00706-RJC
Defendant.)

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DEPOSITION OF JAMES M. EICHENLAUB, A 30(b)(6) WITNESS
FOR BUILDERS ASSOCIATION OF METROPOLITAN PITTSBURGH

Wednesday, May 29, 2024

Filed on behalf of the Defendant

Counsel of Record for this Party:

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1 DEPOSITION OF JAMES M. EICHENLAUB

2 a 30(b)(6) witness herein for Builders Association
3 of Metropolitan Pittsburgh, called by the Defendant
4 for examination, taken pursuant to the Federal
5 Rules of Civil Procedure, by and before Michelle L.
6 Hall, a Registered Merit Reporter and a Notary
7 Public in and for the Commonwealth of Pennsylvania,
8 at the law office of Meyer, Unkovic & Scott, 535
9 Smithfield Street, Suite 1300, Pittsburgh, PA,
10 scheduled to commence at 9:00 o'clock a.m.

11 COUNSEL PRESENT:

12 For the Plaintiffs:

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24 Also Present: Caitlin Williams, Summer Associate
25 Meyer, Unkovic & Scott LLP

1 to do a 20-unit project. But once this ordinance
2 came into play, they dropped it to 19 so they
3 didn't have to -- you know, because the taking was
4 so significant that it was easier to drop a unit
5 than to stay at 20 and have to comply with the
6 ordinance as it's written.

7 Q. Was that a member?

8 A. Yes.

9 Q. And what's the name of that member?

10 A. Paramount Construction. So, in a way, they
11 were impacted by the ordinance because they had to
12 drop one of the units in order to stay out of the
13 clutches of this ordinance.

14 Q. So, just to confirm, you have -- BAMP has
15 actual knowledge that Laurel Communities applied
16 for a variance from the ordinances?

17 A. Not from the ordinance. I believe that was
18 a variance applied in Polish Hill before it went
19 into effect, but it would have to comply with this
20 ordinance.

21 So they were in litigation I believe
22 over another aspect of that project before this
23 ordinance; so they would -- they have to get
24 through that before they would have to apply for
25 the ordinance -- for the variance related to this.

1 Q. How do you know any of that information
2 about the Laurel Communities project?

3 A. Talking with the member.

4 Q. Okay. And who specifically did you
5 communicate with?

6 A. Marty Gillespie. I believe that was in one
7 of our responses.

8 Q. So, just to make sure I understand, so,
9 BAMP's understanding is that Laurel Communities had
10 some sort of legal action prior to the
11 implementation of the first of these two
12 ordinances?

13 A. I believe so, yes.

14 Q. Okay. So, did Laurel Communities apply for
15 a variance from the two ordinances that are at
16 issue in this case?

17 A. I -- I guess -- I don't believe -- again,
18 not knowing completely, but I don't believe they
19 have. They haven't reached that stage yet.

20 Q. So, the Laurel Communities project is still
21 ongoing?

22 A. It's in a hold -- it's in a holding pattern
23 I understand based on the initial variance request
24 and the appeal of that. But it's still one that I
25 believe that they would like to do.

1 Q. So, I just want to make sure I understand.
2 So, to your knowledge, or to BAMP's knowledge,
3 Laurel Communities applied for a variance of a
4 prior ordinance prior to these two ordinances?

5 A. It's to their overall zoning ordinance of
6 the City.

7 Q. And do you know, is that a proceeding
8 ongoing?

9 A. I believe so.

10 Q. Okay. So, to your knowledge, it has not
11 been denied?

12 A. The initial -- the initial variance request
13 was denied, which is I believe under appeal.

14 Q. And you mentioned this Echo project in
15 Bloomfield. Is that one of the projects that you
16 mentioned?

17 A. Yes.

18 Q. Okay. And that Echo is not a member of
19 BAMP?

20 A. Echo is not a member of the Association.

21 Q. All right. Has echo applied for a variance
22 from these two ordinances that are at issue in this
23 case?

24 A. Yes.

25 Q. How do you know that?

1 project, they have submitted the initial -- the
2 initial process to get approvals.

3 Q. So my question is -- so your Declaration
4 says that it would begin such projects in the next
5 few months. I'm trying to understand what you
6 meant by that.

7 A. When I say "begin," I mean going to the
8 plan review, starting the process. Or, you know,
9 there's a lot of work that goes into it before you
10 start actually building.

11 The government approvals in the City of
12 Pittsburgh take years. They may -- they are ones
13 who would have started that process within the
14 months if they could have.

15 Q. So, would beginning it -- beginning it
16 would mean submitting a site plan and a development
17 plan?

18 A. A preliminary plan or finalized the
19 purchase of the land or gotten, you know -- you
20 know, sometimes they don't actually buy the land
21 until they go -- each project is a little
22 different. They would have gotten a, you know, a
23 time to do diligence. You know, so from the very
24 beginning of the -- you know, started doing
25 preliminary drawings, doing those sort of things,

1 not necessarily putting a shovel in the ground.

2 Financing. There's a lot of enti- --
3 you know, obviously financing is impacted by this
4 ordinance because their return of the -- of the --
5 the return of their investment is impacted by this
6 ordinance; so that also would involve the financing
7 aspects of it.

8 Q. So, I'm handing you, this is what has been
9 premarked as Deposition Exhibit No. 4.

10 (Deposition Exhibit No. 4 was premarked
11 for identification.)

12 A. Uh-huh.

13 Q. All right. Do you recognize this
14 Deposition Exhibit No. 4?

15 A. This is our response to request for
16 documents, production of documents.

17 Q. Okay. Did you participate in the -- did
18 you provide information for these responses?

19 A. I worked with our attorneys in preparing
20 this document, yes. I provided the -- I provided
21 the information that you requested.

22 Q. Okay. And so I'm going to refer you
23 specifically to it's Interrogatory No. 4. Excuse
24 me, Interrogatory No. 5 on Page 4.

25 A. Yes.

1 this Deposition Exhibit 6?

2 A. BAMP, no.

3 Q. Okay.

4 A. BAMP members do, but BAMP itself, no.

5 Q. Is BAMP aware of any requests asking for
6 the zoning to be reclassified related to this
7 project?

8 A. I don't know anything about the specifics
9 of this project.

10 Q. Okay. All right. You can put that aside.

11 A. Other than it's -- as the document says, it
12 has to comply with the IZ.

13 Q. All right. So, I'm going to turn to some
14 questions about Dr. Werrin. I'll pause for a
15 second, though. I, at most, maybe have half an
16 hour. It might be less than that. I want to give
17 you an opportunity to take a break.

18 A. Sure.

19 THE WITNESS: Restroom?

20 MR. CARROLL: Yes.

21 (Recess was taken.)

22 BY MR. CARROLL:

23 Q. Is Dr. Werrin a member of BAMP?

24 A. Yes, he is.

25 Q. And what type of member is Dr. Werrin?

1 A. He's a builder member.

2 Q. What does it mean to be a builder member?

3 A. They are involved in the construction and
4 land development, remodeling. They are the folks
5 who are actually doing the actual -- and it's not a
6 firm, you know -- those are the general aspects of
7 the -- of the definitions. But we don't --

8 In our application, they have a choice
9 between a builder and associate member, and it's
10 oftentimes, you know, they are -- we -- a garage
11 door installer is not a builder. But if that
12 garage company was also involved in land
13 development, then they could, you know, be
14 classified as a -- as a builder member. But we
15 don't go that -- go through an extensive vetting
16 process.

17 The classification has a lot to do with
18 being a voting member or how many votes you have or
19 seats you have on our state and national Boards.
20 We're all in it together. But that's really the
21 differentiation between -- our Board of Directors
22 has one more builder member than an associate
23 member because it is a builders' association. But
24 the other main reason for those classifications
25 relates to the structure of our state and national

1 association and how many voting seats you have on
2 those Boards.

3 Q. And how did Dr. Werrin become a builder as
4 opposed to an associate member?

5 A. In this instance, he's proposing to do
6 development. Dr. Werrin is an investor and a
7 property owner who wants to do development of a
8 specific property with other partners, and so he --
9 you know, in this instance, it's -- he's still a
10 member, but, yes, he is a builder member and he --
11 in this instance, he would fall under that
12 classification of a builder member versus an
13 associate.

14 Architects, engineers and those sorts of
15 things are generally the associates. The lumber
16 suppliers, those sort of things. But can 84 Lumber
17 be a builder member even though their predominant
18 business is supplying lumber? Yes, probably,
19 because they do a lot of development -- they do
20 development as well. So they could if they
21 wanted -- you know, if they so chose could
22 reclassify themselves to be a builder member.

23 Q. Is BAMP aware of Dr. Werrin developing any
24 properties prior to the current property?

25 A. Dr. Werrin is a dentist. Dr. Werrin is a

1 property investor. Dr. Werrin is involved in
2 development. He could be involved also with
3 partners, real estate folks. Perhaps they --
4 again, I'm not sure specifically, but he could
5 partner with a Walnut Capital as the -- so he would
6 be an investor and as a developer, but he would --

7 Dr. Werrin certainly knows his
8 limitations; so he would be involving other
9 professionals to assist him in redeveloping and
10 investing of his property. So he would have other
11 partners that he would work with and rely upon in
12 making -- in guiding him with that process.

13 Q. So, again, just beyond the current project,
14 is BAMP aware of Dr. Werrin developing any other
15 properties?

16 A. I haven't spoken to him. He may have.

17 Q. But BAMP is not aware of any other
18 projects?

19 A. No.

20 Q. Does Dr. Werrin have a leadership role in
21 BAMP?

22 A. No.

23 Q. Is he on any committees?

24 A. No.

25 Q. Or Boards? Or the Board, rather?

1 A. To be honest with you, other than Laurel
2 Communities, none of the folks that I have
3 mentioned here -- well, McKinney had a woman, a
4 person who was in involved on the apartment side as
5 a past president. But all of these folks, other
6 than Laurel Communities, is -- does not have a
7 position on the Board.

8 Q. When did Dr. Werrin become a member of
9 BAMP?

10 A. Late August of this year. Of last year, I
11 believe. Late August, maybe.

12 Q. What's the exact date?

13 A. I don't know the exact date. I -- I have
14 members come and go constantly. But he certainly
15 was a member before we filed the Amended Complaint.

16 Q. I don't want to trip you up here. Would
17 October of -- would October make -- would that
18 potentially be accurate, or do you have a strong
19 opinion on August?

20 A. I'm not going to give you a specific date.
21 I know it was prior to the Amended Complaint.
22 He -- you know, in his investigation, I believe,
23 you know, that -- when he was looking to invest in
24 this property, he heard about this ordinance, and
25 then, you know, was -- became aware that we were

1 filing a Complaint on it.

2 And I think he was not very pleased with
3 what was happening, so he wanted to join the
4 Association and was willing to put his name on the
5 Complaint.

6 Q. So BAMP's understanding is that he became a
7 member essentially to pursue this litigation?

8 A. To assist us in -- we -- we picked up a
9 number of members on this litigation, and we lost
10 one member. Your company, your firm, dropped out
11 of the Association. But we picked up a number of
12 folks who -- from the initial Complaint filed, you
13 know, said, "I believe in what you're doing. I
14 would like to know a little bit more about the
15 Association," you know, and then we -- we have
16 that -- our membership roster changes constantly,
17 every month.

18 Members, you know, come in. Some
19 members let their membership lapse, and they may
20 reinstate later on. It's a moving, you know,
21 breathing organization. But we picked up a number
22 of members as a result of this. Not necessarily
23 willing to put their name on the suit, but just
24 wanted to support us in believing what we were
25 doing was right and fighting for the industry.

1 Q. Does BAMP have a record of the membership
2 date of its members?

3 A. I can -- yes. If we -- if I was asked
4 specifically when the date he joined, I could go to
5 our records and find out when his -- what month he
6 was approved.

7 Q. Okay. And would it just be the month or
8 does it have the date also?

9 A. I would have to go and then look at a
10 deposit, you know -- you know, dues deposits and
11 that sort of thing. But, yeah, we would -- I could
12 probably narrow it down to when he was -- there's a
13 process that we have to, quote/unquote, approve the
14 membership.

15 Even though they may have paid us,
16 there's -- we have to do that through our national
17 association who's generally the keeper of members,
18 so to speak, and, so, I could go back and see when
19 that was actually approved with NAHB. That doesn't
20 mean when we received the application or -- you
21 know, there's usually a couple days. In some
22 instances, it's even longer if they -- some people
23 apply and they say, "Invoice me," so then we have
24 to invoice them.

25 We don't approve that membership until

1 the check is received. Some people can go online
2 and approve -- you know, apply right away. So we
3 have their payment, but then we still have to go
4 through the approval process of approving their
5 membership; so their money then is transferred
6 through the online payment portal to NAHB. NAHB
7 may not post it until the end of the month.

8 So when are they specifically? We
9 recognize it when we approve them, and NAHB may be
10 two weeks lagging in their membership.

11 Q. When you say "NAHB," what is that?

12 A. That's the National Association of Home
13 Builders. That's our national organization that's
14 involved, you know, in, again, working with us in
15 this case. And the Pennsylvania Builders
16 Association is our state association. Members who
17 join are members of all three organizations.

18 Q. So just taking a step back, if someone
19 approaches you to become a member of BAMP, how does
20 that process work?

21 A. There's two ways to join. There's a paper
22 application that they can fill out and submit and
23 either process with a credit card or with a check.
24 In some instances, they ask to be invoiced.

25 Then we also have an online application

1 on our Website where people can go in and fill out
2 the information that is required, and, again,
3 either pay immediately or ask for an invoice.

4 Q. And what --

5 A. Then there's a submission. We get notes of
6 the submission; then we have to approve it. You
7 know, there's a -- there's a process.

8 Q. So, when that -- whether it's in the mail
9 or delivered or through the Website, who does that
10 application go to?

11 A. It goes to us at the local level.

12 Q. Okay.

13 A. And then Georgia, my staff person, does
14 some of the paperwork. It's -- there's a process.
15 But I open the mail, so I may see it first. But
16 then it's turned over to her to actually do the
17 processing.

18 Q. Is there any sort of review or
19 investigation of that paperwork once it comes in?

20 A. We -- the only requirement to be a member
21 is that they -- you know, that, you know, they have
22 to be an established business. Sometimes we check
23 on it.

24 Oftentimes there is a sponsor; so,
25 there's a part of the application that says, you

1 know, "Who recommended you to be a member?"
2 Sometimes that's -- more oftentimes than not, it's
3 left blank because it's not a required field. We
4 will sometimes reach out to them.

5 And we have people who join for several
6 reasons. We have insurance programs, so people
7 join for the insurance programs. People join
8 because they want to be involved in our networking
9 or our educational programs. You know, there are
10 different reasons.

11 But we -- the application is reviewed by
12 our Membership Committee and then is ultimately
13 retroactively approved by our Board of Directors.
14 There is a -- they approve it. They are given the
15 list and we -- there's a policy that allows us to,
16 once the Membership Committee reviews it, we can
17 go -- we will approve it, and it usually -- you
18 know, it could take up to two weeks to file -- to
19 go through the entire process.

20 Q. Does BAMP have a copy of Werrin's
21 application?

22 A. Yes.

23 Q. And --

24 A. I'm sure we could find it. I believe his
25 was done online. We would have to go back and see

1 if we can, you know -- but I believe his
2 application was an online application.

3 Q. And you're able to access those online
4 submissions?

5 A. I believe so. I -- I don't think we would
6 lose them. I think she -- I think they're stored
7 in the application process. But if not, we can
8 certainly get the records from NAHB of when that --
9 you know, because NAHB has records -- the
10 individual, their classification, their
11 subclassifications, their sponsor, if a sponsor was
12 designated. So, we would be able to pull that
13 from --

14 But that date is going to be when --
15 when it entered into the NAHB system, not
16 necessarily into our system.

17 Q. And there could be a difference between the
18 two?

19 A. There could be a difference.

20 Q. But would your paperwork be able to --
21 would that indicate when Dr. Werrin became a member
22 of BAMP as opposed to NAHB?

23 A. A specific date? You know, because I --
24 because his -- his -- his application would have
25 been on our Board of Directors -- in the minutes.

1 Again, the Board meets every other month. So, it
2 would -- you know, and then they approve
3 retroactive.

4 I would have to -- I would have to look
5 as far as a specific date of when it was actually
6 submitted. I know all of them things occurred
7 prior to us submitting the Amended Complaint.

8 Q. And does BAMP have member dues for members?

9 A. Yes. It's \$850 a year.

10 Q. Okay. And when you become a member, is
11 that the same payment that you need to make?

12 A. That's the payment that you pay. That's
13 the amount that you pay to become a member for 12
14 months. We have members who pay on a monthly
15 basis. They're allowed to do a monthly or
16 quarterly basis.

17 But the bulk of our members -- I believe
18 in Mr. Werrin -- Dr. Werrin's case it was paid
19 for -- it was an annual payment.

20 Q. Okay. And Dr. Werrin paid that when he
21 applied or when he became a member?

22 A. Again, I -- I believe so. But I can't
23 without seeing the record in front of me
24 specifically confirm that, but most likely, yes.
25 And in some instances -- no, it's -- yeah.

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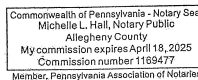
COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

I, Michelle L. Hall, a notary public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, JAMES M. EICHENLAUB, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness, all to the best of my skill and ability.

I further certify that the inspection, reading and signing of said deposition were not waived by counsel for the respective parties and by the witness and if after 30 days the transcript has not been signed by said witness that the witness received notification and has failed to respond and the deposition may then be used as though signed.

I further certify that I am not a relative, or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 3rd day of June, 2024.



Michelle L. Hall
Michelle L. Hall
Notary Public